

## **INITIAL STATEMENT OF REASONS NON-CONTROLLING SUMMARY**

**Sales and Use Tax Regulations 1807, ~~Process for Reviewing Local Tax Reallocation Inquiries~~**

**[Proposed] 1807. Petitions for Reallocation of Local Tax**

**1828. ~~Process for Reviewing Transactions and Use Tax Distribution Inquiries~~**

**[Proposed] 1828. Petitions for Distribution or Redistribution of Transaction and Use Tax**

### **Specific Purpose**

The purpose of the proposed amendments to California Code of Regulations, title 18, sections 1807, *Process for Reviewing Local Tax Reallocation Inquiries*, and 1828, *Process for Reviewing Transactions and Use Tax Distribution*, respectively, is to institute regulatory changes to the processes for reviewing petitions for local tax reallocations and transition and use tax redistributions. The proposed amendments also include a transition rule for requests filed prior to January 1, 2003 (Regulation 1807), and July 1, 2004 (Regulation 1828).

### **Necessity**

The Board needs to jointly revise Regulations 1807 and 1828 to provide for a more comprehensive process for review of petitions for local tax reallocation, to restructure the request for extension process, and to provide notification of substantially affected jurisdictions at an earlier level in order that a single process will resolve disputes.

The proposed amendments will eliminate unnecessary review levels, update terminology, and reorganize the regulations to prevent misinterpretation and improve readability.

The proposed amendments also retain transition rule language, which preserves the open status of certain cases and retains the ability for similar arguments to be made in respect to other pending matters.

### **Factual Basis**

Sales and Use Tax Regulation 1807 provides the process for reviewing requests by local jurisdictions for investigation of suspected misallocation of local taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law. Procedures for processing such requests were adopted by the Board in 1996. Based in part on these

procedures, the Board adopted Regulation 1807 in August 2002 to formalize procedures for reviewing appeals for reallocation of local tax. The process for reviewing appeals of distributions of taxes imposed under the Transactions and Use Tax Law (commonly called “district taxes”) is explained in Regulation 1828, which was adopted in March 2004, based in large part on Regulation 1807.

Regulations 1807 and 1828 currently provide for five levels of review:

1. **Allocation Group** – The initial review and investigation of reallocation requests is performed by the Allocation Group of the Audit Determination and Refund section (within the Sales and Use Tax Department).
2. **Refund Section Supervisor** – a decision of the Allocation Group may be appealed to the Supervisor of the Audit Determination and Refund Section (Refund Section Supervisor).
3. **Local Tax Appeals Auditor** – A decision of the Refund Section Supervisor may be appealed the “Local Tax Appeals Auditor” (who was also within the Sales and Use Tax Department when these regulations were adopted but is now part of the Appeals Division).
4. **Board Management** – A decision of the Local Tax Appeals Auditor may be appealed to “Board Management.” (This level of review was originally introduced when there was no recourse to the Board after the Sales and Use Tax Department had completed its review, and it was felt that some additional review beyond that by the Sales and Use Tax Department was necessary.)
5. **Board Members** – A decision by Board Management may be appealed to the Board with notification to any jurisdiction that could be “substantially affected” by the Board’s decision (i.e., a jurisdiction whose allocation would increase or decrease by five percent or more of its average quarterly allocation or by \$50,000).

Compliance Policy and Procedures Manual Chapter 9, Miscellaneous, and publication 28, *Tax Information for City and County Officials*, contain additional information regarding the administration of local and district tax reallocations.

In 2005, the position of the Local Tax Appeals Auditor was moved from the Sales and Use Tax Department into the Appeals Division. As part of its assumption of these duties and in conjunction with the Board’s project to revise its Rules of Practice (culminating in the Board’s recent adoption of the Board of Equalizations Rules for Tax

Appeals), the Appeals Division reviewed Regulations 1807 and 1828 to determine what changes might be required. The Appeals Division determined that circumstances had

changed such that certain levels of review in the current regulations are unnecessary. The Appeals Division further determined that the current regulations do not contain a sufficiently comprehensive review process so that a single petition will bring all substantially affected jurisdictions within the same administrative appeal, and that better organized regulations, more closely conforming to terminology in our other regulations, would be easier to understand and apply.

Board staff met with interested parties on October 10, 2007, and November 27, 2007, to discuss the proposed revisions to Regulations 1807 and 1828. Submissions were received from MuniServices, HdL Services, and Robert Cendejas following the second interested parties meeting. Based on comments from these submissions, staff proposed further revisions to the regulations, and there were several additional exchanges of versions and concerns between staff and MuniServices during which all parties were able to come to agreement on the regulations, with the single exception of the “Transition rule” (which was later adopted as part of the regulations by the Board). As proposed, Regulations 1807 and 1828 would streamline the appeals process by eliminating two unneeded levels of review. The proposed revisions would also notify a jurisdiction of a decision that substantially affects it and allow that jurisdiction to also appeal to the next level within the same administrative proceeding. Thus, under the proposed regulations, there would be three levels of review:

1. **Allocation Group** – The initial review and investigation of reallocation requests would continue to be performed by the Allocation Group, with any jurisdiction substantially affected by its decision being notified.
2. **Appeals Division** – A decision of the Allocation Group could be appealed to the Appeals Division by the petitioning jurisdiction *and* by any jurisdiction notified as substantially affected (any other jurisdiction substantially affected by the decision of the Appeals Division).
3. **Board Members** – A decision by the Appeals Division could be appealed to the Board, again by the petitioning jurisdiction and any jurisdiction notified as substantially affected.

The proposed revisions also restructure the request for extension process. Under the current provisions, the petitioning jurisdiction (at each level of review through the Board Management level of review) has 30 days to appeal to the next level and is allowed a 30-day extension. If the petitioning jurisdiction disagrees with the decision of Board Management, it has 90 days to file a petition for hearing by the Board. Under the proposed revisions, the petitioner or any notified jurisdiction has 30 days to appeal a decision, or supplemental decision of the Allocation Group, and may request a 30-day extension for good cause. At the Appeals Division level, the petitioner or any notified jurisdiction may appeal a Decision and Recommendation (D&R) or Supplemental D&R (SD&R) issued by the Appeals Division within 60 days of the date of the mailing of the D&R or SD&R.

It is also proposed that subdivision (e) be added to Regulation 1828 to incorporate recent revisions to Revenue and Taxation Code section 7269. Assembly Bill 1748 (Stats. 2007, Ch.342) added section 7269, which limits redistributions of district tax to amounts originally distributed in the two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper distribution (that is, the same limitation period applicable to local tax reallocations). Thus, when the date of knowledge is established on or after January 1, 2008, redistributions of district tax will be limited to amounts originally distributed in the prior two quarterly periods. Inquiries where the date of knowledge is before January 1, 2008, will be subject to the three-year statute of limitations.

In summary, the proposed amendments to Regulations 1807 and 1828 include:

1. Review by Allocation Group
2. Review by Appeals Division
3. Review by Board Members

#### **No Mandate Regarding Use of Specific Technologies**

The proposed amendments do not mandate the use of specific technologies or equipment.

#### **Initial Determination Regarding Alternatives**

The Board does not believe that the proposed amendments will have any adverse impact on small business, and has made an initial determination that there are no reasonable alternatives to the proposed amendments, which would lessen any adverse impact on small business.